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the ownership. This proprietary character of possession appears today in cases allowing an adverse possessor to maintain ejectment — a proprietary action — against any one not claiming under the outstanding title.[8] It is further supported by a few cases like the present. The adverse possessor whose land is taken loses, as between himself and the state, not the mere expectancy of a property right, but one already in existence, for which logically he should have full recompense at once.[9] Practically, however, to protect the state and the outstanding right of the former owner, it is better to have the money paid into court, the income and eventually the principal [2] to be paid to the adverse possessor unless the original owner appears before he is barred.[10] It is immaterial how long the adverse possession has lasted,[11] or whether it began in a wrongful entry,[2] but it must be more than the possession of a tenant, even though the landlord does not appear.[12]

EQUITABLE ESTOPPEL OF MUNICIPAL CORPORATIONS. — Cases occasionally arise the peculiar hardship of which pleads for a doctrine of equitable estoppel against municipal corporations which are asserting a right or setting up a defense based on the ground that they have acted *ultra vires*. The general rule, however, is well settled that, while a municipal corporation can be estopped from asserting an irregular exercise of corporate power, it cannot be estopped from asserting a lack of power. The reason for allowing the privilege is hardly because, as is sometimes said, the corporation is but a trustee for the inhabitants, for acquiescence by the latter in the *ultra vires* act will not estop them,[1] though acquiescence in a trustee's breach of trust estops a *cestui*. Nor can the suggestion [2] that the corporation is the agent of the inhabitants, binding them by wrongful acts within its powers but not by acts wholly beyond its powers, be pressed far; for the inhabitants can never ratify, as can an ordinary principal, an act done wholly in excess of authority.[3] Rather, the reason is the strong public policy of restraining these corporate powers strictly within their grant. This is founded on the vital consideration of the necessity of saving municipalities from fraud and ruin, induced by the misconduct of corrupt officials.

Several classes of cases, however, which seem exceptions, must be carefully distinguished. Often it is not clear whether the corporation has exceeded its powers or only abused them. This is frequently the case with municipal bonds. But where the decisions seem contrary to the general rule it will usually appear that some sort of power to issue can be found, in which case irregularities in its exercise cannot be urged against a holder for value.[4] Also, while a municipality may not be liable on a contract *ultra vires* as framed, yet, if it has accepted benefits under the contract which are

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[8] Asher *v.* Whitlock, L. R. 1 Q. B. 1. *Contra*, Doe d. Carter *v.* Barnard, 13 Q. B. 945.

[9] See Andrew *v.* Nantasket Beach Ry. Co., 152 Mass. 506.

[10] *In re* Loder, 19 N. S. W. Eq. 41.

[11] See Geyde *v.* Commissioner of Public Works, [1891] 2 Ch. 630.

[12] Geyde *v.* Commissioner of Public Works, *supra*.

[1] Ottawa *v.* Carey, 108 U. S. 110; McPherson *v.* Foster Bros., 43 Ia. 48.

[2] See Schumm *v.* Seymour, 24 N. J. Eq. 143, 154, 155; Halbut *v.* Forest City, 34 Ark. 246.

[3] Lewis *v.* Shreveport, 108 U. S. 282.

[4] Marcy *v.* Oswego, 92 U. S. 637.

within its general power to take, it must pay a fair price therefor.[5] Furthermore, a transaction binding a municipal corporation may be illegal and yet not *ultra vires*.[6] Finally, if the corporation has power to grant a license, it may, because of large expenditure by the licensee, be equitably estopped to revoke the license, until to continue it would itself be *ultra vires*.[7] But if none of these distinctions is involved, it seems clear that a municipal corporation should not be estopped to set up a claim of *ultra vires*, though the hardship on the other party be great.

An Ohio court has recently decided, however, that a city is estopped from enjoining a gas company from maintaining its pipes laid in the streets, whether the ordinance, in reliance on which the company had acted, was *ultra vires* or not. *Darby* v. *Norwood*, 52 Oh. L. Bul. 253 (C. P. Hamilton Co., Dec., 1906). This result is opposed alike to principle and to authority.[8] If, as is well settled, a municipal corporation is not liable to the purchasers for value of a great issue of *ultra vires* bonds,[9] the city enjoys no larger privilege if permitted to enjoin a grantee from using the pipe lines which the latter has laid in the streets. Nor do the decisions, contrary to the intimation of the present case, show equity a court so tender as to refuse its peculiar aid to further a claim of *ultra vires*, for it will enjoin the collection of taxes to pay void bonds.[10] Those cases which allow an estoppel against a municipal corporation, when there has been long adverse user of public property coupled with large expenditures thereon,[11] afford some analogy. But these not only are opposed by better reasoning,[12] but also do not involve the more serious question of lack of power.

EFFECT OF AGREEMENTS ON THE CHARACTER OF FIXTURES. — When the courts, yielding to business necessity, relaxed the common law rule that whatever is annexed to the soil belongs to the soil, and permitted tenants to remove those fixtures which they had erected for purposes of trade or agriculture, there was opened up a possibility for confusion as to the character of such fixtures during the period of annexation. Since they were chattels both before and after that period, many courts adopted the view that they never lost the character of chattels.[1] If, it was further argued, things bearing such a relation to the land as would normally make them a part of it were allowed to retain their original characteristics because of the special relations of the parties, it followed that the same result might be achieved by agreement.[2] Though this doctrine has been widely accepted and is convenient as between the parties, many courts which profess to recognize it

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[5] Hitchcock *v.* Galveston, 96 U. S. 341.
[6] Howell *v.* Buffalo, 15 N. Y. 512.
[7] Spencer *v.* Andrews, 82 Ia. 14.
[8] Detroit *v.* Detroit City Ry. Co., 56 Fed. Rep. 867, 892, 893; State *v.* Murphy, 134 Mo. 548; Smith *v.* Westerly, 19 R. I. 437, 446.
[9] German Bank *v.* Franklin County, 128 U. S. 526.
[10] Lippincott *v.* Pana, 92 Ill. 24.
[11] Paine Co. *v.* Oshkosh, 89 Wis. 449.
[12] London, etc., Bank *v.* Oakland, 90 Fed. Rep. 691, 701; Webb *v.* Demopolis, 95 Ala. 116. But see 17 HARV. L. REV. 273.

[1] Poole's Case, 1 Salk. 368; Shapira *v.* Barney, 30 Minn. 59. *Contra*, Guthrie *v.* Jones, 108 Mass. 191.
[2] Hendy *v.* Dinkerhoff, 57 Cal. 3; Howard *v.* Fessenden, 96 Mass. 124; Harris *v.* Hackley, 127 Mich. 46. See Fitzgerald *v.* Anderson, 81 Wis. 341.